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OFFICE OF GOVERNOR

November 13, 2001

Defense Acquisition Regulations Council  
Attn: Ms. Angelina Moy  
OUSD(AT&I)DP(DAR)  
IMD 3C132  
3062 Defense Pentagon  
Washington, DC 20301-3062

RE: Public Comments (DFARS Case 2000-D024)

Dear Ms. Moy:

The Indian Financing Act of 1974, 25 U.S.C 1451 et seq., established the Indian Incentive Program to aid the **economic** development of **American** Indian and **Alaskan** Native communities. The Indian Incentive Program provides additional **compensation** to Federal contractors when these contractors use Indian **organizations** or Indian-owned enterprises as subcontractors or suppliers. See 25 U.S.C. 1544 (1999). Although **the** Indian Incentive Program has historically been underutilized, an increasing number of prime contractors have recently been making use of the program and, consequently, an increasing number of Indian organizations and Indian-owned enterprises have been benefiting **from** the economic opportunities thereby made available.

Recognizing the growing importance of this program to the achievement of its goal of increasing economic development in American Indian and Alaska Native communities, Congress has recently taken several steps to support the Indian Incentive Program and to encourage its utilization. In the 2000 and 2001 Department of Defense Appropriation **Act**, Congress appropriated **\$8** million for the Indian Incentive Program. It also **required** that the program **be** made available to subcontractors as well as prime contractors. Congress' support of this vital program has been undermined by the DAR Council's recent decision that the **Indian** Incentive Program contract clause (FAR 52.226-1, Utilization of Indian **Organizations** and Indian-Owned Economic Enterprises) should not **be** used **in** solicitation and contracts for **commercial** items (FAR Part 12 procedures).


**We object** to the DAR Council's decision to bar the use of the Indian Incentive Program clause **in** contracts for commercial items. The Council's decision to exclude Indian

~~manufactured~~ or supplied ~~commercial~~ items from the Indian Incentive Program effectively limits the Indian Incentive Program effectively limits the Indian Incentive Program to contracts and subcontracts for supplies or services ~~that~~ exceed the simplified acquisition threshold of **\$100,000.00** and for products that are unique to the Federal government. Few, ~~if~~ any, Indian organizations and Indian-owned enterprises are able to compete in these areas, and, therefore, few will be able to take advantage of this important program.

We have taken this opportunity to address the DAR Council's prior decision to limit the Indian Incentive **Program**, because the DAR Council gave interested parties no opportunity to comment on this limitation prior to the promulgation of the final rule. The DAR Council's failure to provide an opportunity for comment on the proposed **rule** change is ~~an~~ apparent violation of the Administrative Procedures Act. The proposed **rule**, published on November 18, 1999, explicitly permitted the use of the Indian Incentive Program clause in commercial contracts under FAR Part 12 at the discretion of the contracting officer, if there were subcontracting opportunities for Indian organizations or Indian-owned enterprises. The final rules, published on April 13, 2001, does not allow for the Indian Incentive Program to ~~be~~ used in commercial contracts, thereby seriously restricting the application of the Indian Incentive Program. **This** Limitation ~~was~~ added to the final rule without notice and without an appropriate opportunity for comment from effected parties.

The DAR Council's decision to place limitation on the Indian Incentive Program offends sound public policy. Its decision ~~on~~ the interim rule to expand these limitations to subcontractors at any tier will negatively impact the program's success. We urge the Council to remove the FAR Part 12 commercial item exclusion ~~from DFARS 52.266-104~~ and the interim rule DFARS Case **2000-D024**.

Sincerely,



Denny Gutiérrez, Governor  
**Santa** Clara Pueblo